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STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

S.P.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE

AND HEALTH SERVICES AND

ATLANTIC COUNTY DEPARTMENT

OF FAMILY AND COMMUNITY

DEVELOPMENT,

RESPONDENTS.

ADMINISTRATIVE ACTION

FINAL AGENCY DECISION

OAL DKT. NO. HMA 00569-23

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. Neither party filed exceptions in this

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matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 12, 2024, in accordance with an Order of Extension.

This matter arises from Atlantic County Department of Family and Community Development's (Atlantic County) December 13, 2022 denial of Petitioner's Medicaid Only application for being over the \$2,000 resource limit to qualify for benefits. Based upon my review of the record, I hereby ADOPT the findings and conclusions of the Administrative Law Judge (ALJ) holding that Petitioner was ineligible for Medicaid because a trust entitled "A.H.P. Irrevocable Insurance Trust" (the trust) was an available resource for Petitioner.

Participation in the Medicaid program will be denied if the resources of an individual exceed \$2000 as of the first moment of the first day of the month. N.J.A.C. 10:71-4.5. A "resource" is defined as "any real or personal property which is owned by the applicant . . . and which could be converted to cash to be used for his/her support and maintenance." See 20 C.F.R. § 416.1201(a) and N.J.A.C. 10:71-4.1(b). If the individual has the right, authority or power to liquidate the property, it is considered a resource. Ibid. A resource is "countable" for purposes of eligibility determinations if it is "available to the applicant/beneficiary or any person acting on his or her behalf." N.J.A.C. 10:71-4.1(c)(3). A resources classified as excludable shall not be considered either in the deeming of resources of in the determination of eligibility for participation the Medicaid Only Program. N.J.A.C. 10:71-4.4(a). Excludable resources include the value of resources which are not accessible to an individual through no fault of their own, such as irrevocable trust funds. N.J.A.C. 10:71-4.4(b)(6)(i). The "no fault of their own" provision in the statute exists to

protect from self-settled trust that an individual may create to use to reduce their total assets to qualify for Medicaid. In re Lennon, 294 N.J.Super. 303, 683 A.2d 239, 1996 N.J. Super. LEXIS 371 (1996).

Since 1986, Congress has taken steps to curb Medicaid applicants attempting to shelter their assets in irrevocable trusts in order to take benefits from the state while preserving their own assets for themselves and their heirs. See Ramey v. Reinertson, 268 F.3d 955, 958-59 (10th Cir. 2001) (discussing this phenomena and Congressional response in enacting 42 U.S.C.A.1396a(k) and its subsequent replacement with “another statute even less forgiving of such trusts”.) Further, in evaluating the availability of resources, New Jersey Courts have held that when an individual’s own proceeds from a judgment or settlement are transferred into a trust, same are still considered an available resource. In re Lennon, 294 N.J.Super. 303. See also D.W. v. Division of Med. Assistance & Health Servs., No. A-2092013T4, 2015 N.J. Super. Unpub. LEXIS 2761 (App. Div. Dec. 2, 2015) (finding a trust funded by assets recovered in a personal injury lawsuit is not an excludable Medicaid asset, but may have been considered same if the trust was established to pay the assets of the trust back to the State after the beneficiary passed.) See M.H. v. Atlantic County Board of Social Services, HMA 6381-2021 Final Decision (15th March 2022) finding a trust containing the assets of the Medicaid applicant is a countable available resource regardless of the purpose for which the trust was established, regardless of whether the trustees have or exercise discretion under the trust, regardless of any restrictions on when or whether distributions may be made from

the trust, and regardless of any restrictions on the use of distributions from the trust. See N.J.A.C. 10:71-4.11(b); 42 U.S.C.A. 1396p(d)(2)(C).

Here, Petitioner, through her Designated Authorized Representative, filed a Medicaid Only application on October 18, 2022.¹ (R-1,P. 2-10). On December 13, 2022 Petitioner's application was denied for being over the \$2,000 resource limit. Specifically, Atlantic County determined that funds in the trust, which as of October 31, 2022 had a balance of \$21,645.28, was an available resource to Petitioner. (R-1, P.13). The trust, initially set up by Petitioner's brother, provided, in pertinent part,

The Trustees shall hold in trust for [Petitioner's] benefit the sum of Three Hundred Thousand Dollars (\$300,000), to be used during her lifetime for the primary purpose of providing her with appropriate housing, if necessary. Without limiting the discretion of the Trustees, it is intended that this money may be used to purchase a residence in the name of the trust for the purpose of allowing said [Petitioner] to live rent-free therein; to make payment on a mortgage on a residence owned by said [Petitioner]; or to loan money to said [Petitioner]; to supplement rental payments on a residential property rented by said [Petitioner]; or to loan money to said [Petitioner] for the purpose of purchasing or improving a residence. (R-1, P. 15-16).²

Upon the death of the Grantor's said sister [Petitioner] this trust for her benefit shall terminate and the Trustees shall distribute all the then remaining trust property, if any, in equal shares among the then living children of said [Petitioner].

¹ Petitioner's first July 21, 2022 Medicaid Only application was denied on August 31, 2022 for failure to provide information.

² Petitioner, S.P., was formerly known as S.H.

In accordance with the above, in 1992 the trust purchased and continues to own the house in which Petitioner resides. (R-1, P. 17-20).³ Thereafter, beginning in August 2017 Petitioner began depositing her Social Security Income directly into the trust. (R-1, P. 21). According to the testimony of the Trustee, Petitioner agreed to do so as the trust account was getting smaller and the Trustees were concerned with the trust's survival. In denying Petitioner's Medicaid application, Atlantic County contends that once Petitioner started funding the trust with her income, the third-party trust was void and the assets were attributable to Petitioner as a resource. Petitioner argues that the payments to the trust were not contributions but rather payments made in exchange for rent of the home where she resides, consistent with the discretion of the Trustee afforded under the trust. (R-1, P.21). Accordingly, Petitioner argues that the trust is an irrevocable trust fund, not accessible to her through no fault of her own, and therefore excluded as a countable resource.

Concurring with the findings of the ALJ I agree that the assets in the trust must be counted as an available resource to Petitioner in determining Medicaid Only eligibility. Despite the initial establishment of the trust as a third party irrevocable trust, the Petitioner's actions in funding the trust with her Social Security payments result in the trust being a countable available resource for Medicaid eligibility. This decision aligns with the broader legal landscape aimed at preventing individuals from sheltering assets in irrevocable trust to qualify for Medicaid while preserving assets for their heirs.

³ Also residing in the home purchased by the trust are Petitioner's daughter and grandson whom do not pay rent.
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Thus, for the reasons set forth above and those contained in the Initial Decision, I hereby ADOPT the Initial Decision.

THEREFORE, it is on this 12th day of FEBRUARY 2024,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance
and Health Services